

Service Date: May 13, 1996

**DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA**

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IN THE MATTER of Flathead Area Custom )	TRANSPORTATION DIVISION
Transportation, dba Kalispell Taxi and Shuttle )	
Service, Kalispell, Montana, )	DOCKET NO. T-95.20.PCN
Application for a Montana Intrastate )	
Certificate of Public Convenience and Necessity )	ORDER NO. 6401a

**FINAL ORDER**

**APPEARANCES**

**FOR THE APPLICANT:**

Thomas R. Bostock, Esq., Warden, Christiansen, Johnson & Berg, PLLP, P.O. Box 3038, Kalispell, Montana 59903-3038.

**FOR THE PROTESTANTS:**

Carol Stephens Donaldson, Esq., French, Mercer, Grainey & O'Neill, P.O. Box 450, Polson, Montana, 59860, representing Port Polson Taxi Service.

Elizabeth S. and Roland J. Morris, Sr., dba Mission Valley Medicab, Moiese, Montana 59824, appearing Pro Se.

**FOR THE COMMISSION:**

Denise Peterson, Staff Attorney, and Wayne Budt, Administrator, Transportation Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601

**BEFORE:**

BOB ROWE, Commissioner and Hearing Examiner

Pursuant to 2-4-621, MCA, a proposed order authorizing a grant of the authority requested was issued in this matter on April 11, 1996. No exceptions, briefs or requests for oral argument have been received. Therefore, the Commission adopts the proposed order as its final order in this matter.

### **BACKGROUND**

1. On March 1, 1995, Flathead Area Custom Transportation, Inc., dba Kalispell Taxi and Shuttle Service (Kalispell Taxi or Applicant), Kalispell, Montana, filed an application with the Montana Public Service Commission for a Class B certificate of public convenience and necessity to transport passengers. Kalispell Taxi, already operating under authority to transport passengers within a 50 mile radius of the Flathead County Courthouse, requested authority to transport passengers and baggage between points and places within Flathead, Lake, Missoula, Lincoln and Glacier Counties. Kalispell Taxi proposed the following limitations: (1) Transportation must originate or terminate within Flathead County; (2) Transportation of Burlington Northern Train crews is prohibited; (3) Operation of vehicles in excess of seven passenger capacity is prohibited; (4) Operation as a charter service is prohibited; and (5) Operation as a limousine is prohibited.

2. The Commission received protests from Kurt A. Slonka, dba Captain's Chair; Robert B. and Emma C. Chada, dba Port Polson Taxi Service; Roland and Lisa Morris, dba Mission Valley Medicab; and Lake County Council on Aging. To avoid a public hearing, on April 21, 1995 Applicant filed proposed limitations as follows: (1) Transportation of non-emergency medical and psychiatric patients to or from Missoula or Lake Counties is prohibited; (2) Transportation of passengers originating in Lake County is prohibited. Applicant requested that the Commission set aside the protests if Protestants did not withdraw their protests based on Applicant's willingness to stipulate.

3. On July 6, 1995 the Commission issued its Notice of Public Hearing, scheduling a hearing for Tuesday, August 1, 1995 in Kalispell, Montana. On July 14, Applicant filed an agreement dated July 6 to modify the first limitation in the April 21st filing as follows: Transportation of non-emergency medical and psychiatric patients to or from Missoula, Lake

or Lincoln Counties is prohibited (Passengers of that category can only be transported if they originate or terminate in Flathead County and to or from Flathead County and Glacier County). In the same letter, Applicant agreed to waive the time constraints (180 days) on the Commission's rendering a decision and requested a continuance of the hearing date. Applicant asked to have it proceed to hearing with the stipulations intact, regardless of the response from Protestants. On July 14, Applicant also filed a letter in which he offered the additional limitation that "transportation of passengers originating from Lake County and passengers originating from places in Lincoln and Missoula Counties that are within 70 miles of Polson and have destinations in Lake County are prohibited."

4. On July 17, 1995 the Commission granted Applicant's request and vacated the August 1 hearing date. On July 25, 1995 the Commission received a letter from Kurt A. Slonka, dba Captain's Chair, withdrawing his protest. In a letter dated August 16, Applicant withdrew the language on the 70 mile radius exclusion. At a duly scheduled work session on August 22, 1996, the Commission denied the Applicant's request to set aside the protests to the application and advised Protestants that the Commission expected their active participation in the hearing. In a letter dated September 25, 1995, Applicant withdrew the modifications to the application, except as follows: Transportation of non-emergency medical and psychiatric patients to or from Missoula or Lincoln Counties is prohibited.

5. The Commission published an Amended Notice of Public Hearing on October 13, scheduling the hearing for November 2, 1995. On October 24, Applicant asked for a delay in scheduling the public hearing and the request was granted. On December 14, 1995, Applicant's new counsel filed a Notice of Representation.

6. The Commission conducted a duly noticed public hearing beginning at 1:00 p.m. on February 12, 1996 at Courthouse East, Old Chapel, 5th Avenue East, Kalispell, Montana before Hearing Examiner Bob Rowe, Commissioner for District 5. Applicant made a motion to restrict application as follows: "7. Transportation of passengers from Lake County limited to those first originating from Flathead County as a same day return to Flathead County." At the conclusion of the hearing, parties agreed to file simultaneous briefs and reply briefs on March 4 and March 14, 1996.

### **SUMMARY OF TESTIMONY**

#### **Applicant's witnesses**

7. James Michael, Applicant, is personnel manager and general manager of Flathead Area Custom Transportation, Inc. (Kalispell Taxi), which was incorporated in 1994. He has been involved in the family taxi business since Kalispell Taxi received operating authority in 1980. He and his mother, Joan P. Michael, are the principles of the corporation. The business is profitable, growing 5 to 7.5 percent each year, he testified.

8. Kalispell Taxi transports the elderly, disabled, and general public, as well as providing a courier service for express deliveries and working with air couriers, serving the entire community. With 12 full-time employees, it operates 24 hours a day, 7 days a week, making 40,000 trips per year with 60,000 passengers. Mr. Michael described the following equipment and facilities: (a) repair and maintenance facility, 30' by 90' building; (b) four cars, 1988-89 Plymouth Grand Furies; (c) six off-line Furies for back up; (d) two 1989 and one 1990 Dodge extra wide transit busses with raised roofs, to use for airport transportation (one accommodating disabled); (e) three additional off-line wide transit vehicles (1988, 86, and 84 units) for back up; (f) 1993 Dodge Caravan, modified for the Americans with Disabilities Act (ADA); and a 1984 standard Dodge van for mid-sized groups and single passengers.

9. The current authority allows service within 50 miles of the Flathead County Courthouse, while Mr. Michaels seeks authority either originating or terminating in Flathead County, with restrictions for moves beginning outside Flathead County, Mr. Michaels testified. The proposed authority would limit medical transportation originating in Missoula or Lincoln Counties, since Captain's Chair and Lincoln County Medical Transport provide those services. Mr. Michaels stated that he seeks to be able to provide transportation originating within Flathead County with a termination point in Lake, Glacier, Lincoln, or Missoula Counties. He knows that there is a public need for the service requested. He receives telephone calls. In February, there was an inquiry about Glacier airport to Libby. In December, a Montana Veterans' Home passenger wanted to go to Great Falls (he had multiple sclerosis and could not go by train or bus). (On cross-examination, Michaels stated that he did not know if he referred the veteran to Valley Mission, but the veteran did go through the PSC to find a

provider.) In the summer, the Applicant receives frequent calls from outside the state asking about rides from the airport to other counties. Mr. Michaels submitted letters from the Veterans' Home and the Flathead County Airport which were admitted for the limited purpose of showing support.

10. Mr. Michaels testified that there was a demand from the tourism sector for transportation outside Flathead County and that tourism needs were not being met. Limousine service is cost-prohibitive for most, as is charter bus service for individual passengers. The tourism trade wants one-stop shopping and one provider, he testified. Tourists are put off if told the carrier can get them there but cannot get them back, he said. The tourists hire taxi service not just to get from point A to B, but also to sightsee, for example, to the Bison Range and Glacier Park. Tourists want to be brought back from the Bison Range as one continuous trip.

11. In Mr. Michaels' opinion, the only overlap in the application is pick up in Lake County to return to Flathead. Port Polson can only transport from Lake to Flathead, so he does not see a serious conflict. Realistically, he would not take a reservation from Lake if there is a provider in Lake capable of doing it. His experience with the Whitefish area illustrates the problem, he stated: Where there are other providers, passengers make reservations with two providers and take the one arriving first. Applicant charges \$1.50 per mile, while Port Polson charges \$1.00 per mile. The Applicant would not dispatch a vehicle 50 miles to pick up someone who would probably not be there.

12. Mr. Michaels maintained that the only overlap with Mission Valley's Medicaid authority is to pick up in Lake County to transport to Flathead. He did not see any effect on Mission Valley because the reimbursement rate was too low. Kalispell Taxi would only take the trip in an emergency and would otherwise refer to another carrier. The problem with medical transportation, he maintained, was that one trip would originate in Flathead and go to Lake, but he wants to be able to bring them back. The Polson medical center is .3 miles beyond his authority and he cannot pick up there for return. Under cross-examination, he testified that it would be cost-prohibitive to travel to Polson under Medicaid to pick up passengers and that he did not foresee taking that business from existing carriers. Also,

Medicaid uses private individuals, reimbursing at \$.29 a mile, so people are less likely to use taxi service. He was asked why, if it is not economical to compete, he is seeking authority. He responded that he had a client, Walter Schirche, who had medical appointments at Polson .3 mile beyond his current 50 miles every one to three months. He cannot pick up at the medical provider and has to provide transportation to Days Inn for a transfer. He has to pay out-of-pocket from Days Inn to the medical facility, he said.

13. Mr. Michaels testified that he made five trips to Polson, two from the Glacier International Airport at Kalispell. The two trips were not in violation until he was notified that his 50 mile radius extended from the Flathead County Courthouse, and KwaTaqNuk and the medical center in Polson are .3 mile beyond his current authority, he maintained. On cross-examination, he admitted that he violated authority regarding service to the Polson medical center. He admitted that he made two trips to KwaTaqNuk, but said that he never picked up fares there.

14. Mr. Michaels testified that he just wants the ability to transport from Flathead County to destinations outside his current authority. There are insufficient providers to meet the public need in tourism, he maintained.

15. Bob Lindsey, Integrated Transport Management, Inc.'s (ITM) liaison with Idaho for Medicaid Transport, Mesa, Arizona, appeared and testified on behalf of the Applicant. From 1992 to October, 1995, ITM was the provider of Medicaid Transportation in Montana. He was familiar with Montana demands, because ITM receives the Medicaid call and passes the information to providers. ITM is a referral source. He testified that he is familiar with the proposed authority, and believes that there is a definite public need and that the Applicant is capable. ITM sold the business and does not currently provide service in Montana. He had not met Mr. Chada. Mr. Lindsey admitted that he had talked to the on-site manager in Billings the morning of the hearing, but does not have personal knowledge of the current situation. ITM is not aware of the providers who can go from Flathead to Glacier. ITM asks by whom they have been transported, and goes with the lowest cost. Mr. Lindsey did not have specific knowledge of whether adequate service would be provided if Medicaid began accepting Medicaid again. He was also unaware of Captain's Chair.

16. Floyd Arness, Kalispell, is the main driver for the Applicant and an employee for 12 years. He answers the telephone, dispatches, handles service requests or refers to the Applicant. He has had requests from West Glacier, Big Fork and Lakeside. He made one run to the Polson medical center and later found out it was in violation. He has turned down requests to Polson, including three the previous summer, and six or seven calls to go from the airport to Mission Valley and St. Ignatius. The callers had no transportation or did not want to wait for the bus. He had one call for the Eureka-Libby area and turned down the request. He was driving and could not make many referrals, he said.

17. Pat Gilbertson, Whitefish, is the dispatcher for Eagle Transit, a bus service serving the general public in Kalispell, and seniors and disabled throughout the county. She testified that she knows of requests within and without the county. She has received requests which Eagle cannot provide, for example from tourists. She had a request to take tourists to Ronan and to the Bison Range and a request from a stranded bus to take wheelchair parties to Glacier County (Rocky Mountain Transport had the wrong kind of lifts). Normally, Eagle Transit does not go out of the County. She always refers to Kalispell Taxi or to Rocky Mountain.

18. Ms. Gilbertson testified that she has dispatched for five years. Eagle Transit is the only local bus in Kalispell. Rimrock and Rocky Mountain go outside Kalispell. Eagle Transit has an exclusive contract with Kalispell Taxi to take seniors and disabled to medical appointments. She did not know that the Polson area had a taxi and was unaware that Valley Missions was available to handle wheelchair business. She was aware of Captain's Chair for Medicaid service.

#### Protestants' Witnesses

19. Robert Chada, Polson, owner of Port Polson Taxi, testified in opposition to the application. He purchased the taxi company in March 1995. He has two cabs in service, and two as back up. Port Polson has two drivers (he and his wife, and one other), more if needed. Port Polson operates from 7:00 a.m. to 2:30 a.m., seven days a week under authority within Polson and a 70 mile radius. He is protesting because the application overlaps his authority. For example, a grant of the application would allow Kalispell Taxi to go to the Missoula

airport, return to Kalispell, and drop off at KwaTaqNuk. Businesses are moving from the Outlaw Inn in Kalispell to KwaTaqNuk, which gives Port Polson the opportunity to do more business under its authority. There is not enough business within his authority to support an additional carrier, he testified. Granting the application would take away business, and long rides sometimes keep the business viable. A grant of the requested authority would open the door for Applicant to take over a majority of the business in Polson, he said. Mr. Chada stated that he is meeting all the taxi needs in the area. He maintained that the application was not consistent with public convenience and necessity.

20. Mr. Chada questioned the fitness of Applicant, maintaining that he has violated his authority more than once. Protestant has made five or six complaints to the Commission about Applicant's operating outside his authority. Mr. Chada testified that he documents all calls which come into the answering service. He has received calls for service from Flathead to Polson, but refers them to the Applicant. He would be willing to go further north to make transfers and to work with the Applicant. All authorities have limitations, Mr. Chada stated, and they have to work together; for example, when he gets a call to go to Butte, Mr. Chada has to work with those carriers with the proper authority. He guaranteed that Port Polson Taxi is always available to make linkups.

21. Elizabeth S. Morris, doing business as Mission Valley Medicab, Moiese, Montana, testified in opposition to the application. Mission Valley has had the authority over three years in several counties. It can go from Missoula to Flathead and return. Mission Valley has never ceased being available to provide service, but stopped taking Medicaid in September due to reimbursement problems. They have set up a non-profit entity to accept donations to help the indigent. Mission Valley has an application before the Commission for approval of a lease of the PSC authority, she testified, and the new operator intends to reapply for Medicaid provider status. She did not see the need for the additional authority requested by Applicant. The area already has Port Polson Taxi and the Lake County Council on the Aging. Further, she maintained there would be an enforcement problem with Kalispell Taxi's presence in the area. It would be impossible to determine whether Kalispell Taxi was operating pursuant to its authority and limitations.



### **FURTHER FINDINGS AND DISCUSSION**

22. Pursuant to Title 69, Chapter 12, Montana Code Annotated (MCA), the Commission supervises and regulates intrastate motor carrier service. § 69-12-201, MCA. The maintenance of an adequate common carrier motor transportation system has been declared a public purpose. § 69-12-202, MCA. To obtain motor carrier operating authority, a motor carrier must file an application with the Commission, which will give notice of the filing and schedule a hearing upon filing of a protest or a request for a hearing. § 69-12-321, MCA.

23. Section 69-12-323, MCA, sets out the requirements for a Commission decision on an application for a certificate and the evidence presented at hearing. The Commission shall find and determine from the evidence whether public convenience and necessity require authorizing the proposed service. The Commission will consider existing transportation service; the likelihood of the proposed service being permanent and continuous 12 months of the year; and the effect of the proposed service on other essential transportation service in the affected communities.

24. The Commission has interpreted § 69-12-323, MCA, as requiring it to address these issues before granting an application for authority:

- a. Is the applicant fit and able to perform the proposed service?
- b. Does the public convenience and necessity require the authorization of the proposed service?
- c. Can and will existing carriers meet the public need for the proposed service?
- d. Would the proposed service have an adverse impact on existing transportation service?

#### **Fitness**

25. The Commission makes a threshold determination of whether the applicant is fit, willing and able to provide the service, considering these factors: (1) the financial condition of the applicant; (2) the intention of the applicant to perform the service sought; (3) the adequacy of the equipment the applicant has to perform the service; (4) the experience of the

applicant in conducting the service sought; and (5) the nature of previous operations, if there are allegations of illegal operations.

26. The Commission finds that Applicant meets the threshold requirement of fitness to provide the service for which it has applied. Kalispell Taxi has provided service in its 50 mile radius, generates a profit, and has adequate equipment and facilities. The allegations of illegal activity raise some concern, however, in that Applicant has admitted to providing service outside its certificate on several occasions. At this time, these allegations do not rise to the level requiring analysis of illegal operations. There was a persistent theme from Protestants, however, that Applicant would disregard the boundaries of the additional authority with enforcement complications. The Commission agrees that a warning is in order that Applicant not exceed its authority and jeopardize one of the potentially more profitable taxi service certificates. The Commission will move on to its analysis of the public need for the additional authority.

#### Public Convenience and Necessity

27. In determining public convenience and necessity, the Commission has traditionally followed the analysis of Pan-American Bus Lines Operation, 1 M.C.C. 190 (1936).

The question in substance is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines of carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest. 1 M.C.C. 203.

28. The public need must be supported by shipper testimony. In a request for additional authority to transport passengers by taxi, the record must demonstrate a need for additional taxi service in the area. The evidence and testimony did not establish a need for taxi service from Kalispell to any of the counties requested. No public shipper witnesses appeared to testify. Applicant has been in the motor carrier business for more than 15 years and knows the requirement to provide shipper testimony. Applicant cannot establish need by his own testimony or that of his employees (driver/dispatcher), particularly without documentation or

concrete evidence. His expert witness had no knowledge of the needs of the area, even the limited needs of medical transportation. A witness from Mesa, Arizona and former liaison with Idaho for Medicaid Transport, Applicant's expert's knowledge of the area was remote. In fact, he admitted unfamiliarity with the particular needs of the locale and had no records to support his concerns about the local service.

29. Applicant's other supporting witness, a dispatcher for the local bus in Kalispell, is not a shipper witness. Her testimony about the needs of the area did not address what service Kalispell Taxi specifically could provide, but rather was related to what the bus company, and other bus companies could provide. With the bus company having an exclusive contract with Kalispell Taxi, the witness was not in a position to make an unbiased assessment about the shipper needs beyond the Kalispell area.

30. The Commission finds that if the application were granted, Protestants would most likely be harmed. Protestants' businesses are moving in a positive direction and could be jeopardized by another competitor in the area. Protestants testified that they were able to meet all the needs in the area, and any additional need. Protestants are willing to work with the Applicant for any linkups for those rare times that a tourist or a patient would require service beyond Applicant's authority. Applicant's business shows a steady growth and increasing profitability within its own authority. Although not relevant to determination of harm to protestants, the Commission finds that Applicant will not be harmed by a denial of this additional authority.

31. A finding that Protestants would be harmed is not essential to this decision, because the record does not establish a need for the additional authority requested by Applicant. No shippers appeared to testify that existing service is inadequate or that the proposed service is needed. Without a demonstration that the public convenience and necessity require the authority as requested, the Commission must deny the application.

#### **CONCLUSIONS OF LAW**

1. The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 12, Montana Code Annotated.

2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter pursuant to the Montana Administrative Procedures Act (MAPA) requirements for contested case procedures. §§ 2-4-601, et seq., MCA.

3. An applicant for a certificate of Class B operating authority must show that the public convenience and necessity require the proposed service. § 69-12-323, MCA.

4. Applicant has not demonstrated a public demand or need for the proposed service.

5. Granting this application would have an adverse effect on Protestants.

### **ORDER**

NOW THEREFORE IT IS ORDERED that the application of Flathead Area Custom Transportation, Inc., dba Kalispell Taxi and Shuttle Service, Kalispell Montana for a Class B Certificate of Public Convenience and Necessity is denied.

Done and Dated this 6th day of May, 1996 by a vote of 5 - 0.

**BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION**

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**NANCY MCCAFFREE, Chair**

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**DAVE FISHER, Vice Chair**

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**BOB ANDERSON, Commissioner**

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**DANNY OBERG, Commissioner**

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**BOB ROWE, Commissioner**

**ATTEST:**

**Kathlene M. Anderson**  
**Commission Secretary**

**(SEAL)**

**NOTE:**      **Any interested party may request the Commission to reconsider this decision.**  
                 **A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Final Order issued in Docket T-95.20.PCN in the matter of Flathead Area Custom Transportation, Inc. dba Kalispell Taxi and Shuttle Service (Kalispell, Montana) has today been sent to all parties listed.

MAILING DATE: May 13, 1996

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FOR THE COMMISSION

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